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Attorneys for Plaintiffs  
 MHC Financing Limited Partnership and  
 Grapeland Vistas, Inc.

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

MHC FINANCING LIMITED  
 PARTNERSHIP, an Illinois limited  
 partnership, and GRAPELAND VISTAS,  
 INC., an Illinois corporation,

Plaintiffs,

vs.

CITY OF SAN RAFAEL, a municipal  
 corporation,

Defendant,

CONTEMPO MARIN HOMEOWNERS  
 ASSOCIATION, a California corporation,

Defendant-Intervenor.

Case No. C 00-3785 VRW

**NOTICE OF FILING PROPOSED  
 ORDER AWARDING ATTORNEYS'  
 FEES AND COSTS**

Hon. Vaughn R. Walker

NOTICE OF FILING

Pursuant to the Court's April 17, 2009 Order, Plaintiffs, MHC Financing Limited Partnership and Grapeland Vistas, Inc. and Defendant, the City of San Rafael, hereby submit a Proposed Order On Award of Attorneys' Fees and Costs, attached hereto as Exhibit A.

*The attached Proposed Order on Award of Attorneys' Fees and Costs has been agreed to as to form by counsel for the Plaintiffs and Defendant City of San Rafael.*

Respectfully submitted,

Dated: May 5, 2009

JENNER & BLOCK LLP

By: s/ Lisa T. Scruggs  
One of the Attorneys for Plaintiffs  
MHC FINANCING LIMITED  
PARTNERSHIP and GRAPELAND  
VISTAS, INC.

## **EXHIBIT A**

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**~~PROPOSED~~ ORDER ON AWARD OF  
 ATTORNEYS' FEES AND COSTS**

Hon. Vaughn R. Walker

In March 2008, Plaintiffs MHC Financing Partnership Limited and Grapeland Vistas, Inc. ("Plaintiffs" or "MHC") submitted a Bill of Costs in which they requested an award of \$1,274,055.37. The Defendant City of San Rafael (the "City") submitted a Bill of Costs in which Plaintiffs requested an award of \$57,614.54 on the same date. The Court, having read and considered each party's Bill of Costs and supporting papers and being fully advised states the following in support of the award of costs set forth below:

On January 29, 2008, the Court issued a final order that resulted in the adjudication of all the claims asserted by MHC in its Second Amended Complaint, including Plaintiffs' claim that the City of San Rafael mobilehome rent control ordinance (the "Ordinance") effected a regulatory taking under the *Penn Central* test as well as a private taking under the Public Use Clause of the Fifth Amendment.

Subsequently, on April 17, 2009, the Court issued an Order for Entry of Judgment, denied the motion for a stay of judgment filed by the City and Defendant-Intervenor the Contempo Marin Homeowners Association (the "Association"), and also issued an Order directing the parties to "confer to approve of an allocation and award of costs in accordance with the prevailing party determination." The Court held that MHC prevailed on its taking claims and is entitled to recover attorneys' fees and costs for its pursuit of those claims and that the City is entitled to reasonable attorney fees' and costs incurred in defending MHC's contract claims.

Pursuant to the Court's directive, the parties have conferred and agreed upon an allocation and award of costs that they believe reflects the Court's prevailing party determination as set forth in its April 17, 2009 Order. The Court finds the agreed upon allocation to be reasonable and shall award costs as the parties have requested.

WHEREFORE, IT IS ORDERED:

1. MHC is hereby awarded from the City costs in the amount of \$307,614.54.
2. The City is hereby awarded from MHC costs in the amount of \$57,614.54.

3. The Court's April 17, 2009 Order awarded MHC attorneys' fees in the amount of \$2,995,612.37 from the City and awarded the City attorneys' fees in the amount of \$1,191,935.89 from MHC.

4. To effectuate the parties' respective obligations regarding attorneys' fees and costs as set forth above: (a) with respect to attorneys' fees the City is hereby ordered to pay MHC a net amount of \$1,803,676.48; and in addition (b) with respect to costs the City is hereby ordered to pay MHC a net amount of \$250,000. Because the amounts the City is ordered to pay MHC as set forth in this paragraph reflect an offset of the attorneys' fees and costs to which the City is entitled against the attorneys' fees and costs to which MHC is entitled, subject to Paragraph 5 MHC is hereby relieved of any obligation to pay any attorneys' fees or costs to the City.

5. This ORDER is without prejudice (i) to any party seeking fees or costs on appeal or in any remanded proceedings, (ii) to the City's right to collect all the fees and costs awarded to it in the event that the judgment in favor of it is affirmed and the judgment in favor of MHC reversed, or (iii) to MHC's right to collect all the fees and costs awarded to it in the event the judgment in favor of it is affirmed and the judgment in favor of the City is reversed.

IT IS SO ORDERED.

Dated: June 9, 2009



**PROOF OF SERVICE**

I, the undersigned, hereby declare that I am over the age of eighteen years and not a party to the action. My business address is 330 North Wabash Avenue, Chicago, Illinois 60611. On May 5, 2009, I caused the foregoing document described as **NOTICE OF FILING PROPOSED ORDER AWARDING ATTORNEYS' FEES AND COSTS** to be served on the interested parties in the action as follows:

- ☐ by placing the original ☒ a true copy thereof enclosed in sealed envelopes addressed as stated on the ATTACHED SERVICE LIST.
- ☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, the correspondence or documents would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Chicago, Illinois in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more that one day after deposit for mailing in the affidavit.
- ☐ **BY OVERNIGHT DELIVERY:** I caused such envelope to be placed for collection and delivery on this date in accordance with standard overnight delivery procedures.
- ☒ **BY ELECTRONIC MAIL:** In addition to service by mail, I transmitted a copy of the foregoing document(s) on this date to the Court via e-mail to be served by operation of the Court's electronic filing system to the e-mail addresses shown below.
- ☐ **BY FAX:** In addition to service by mail, I transmitted a copy of the foregoing document(s) on this date via telecopier to the facsimile numbers shown below.
- ☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the above referenced person(s).
- ☐ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- ☒ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 5, 2009 at Chicago, Illinois.

/s/ Lisa T. Scruggs  
Lisa T. Scruggs

**SERVICE LIST**

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